Supreme Court, U.S.
FILED

981416 MAR 5 1999

OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

KENNETH E. CRITTEN and DELIA G. CRITTEN,

Petitioners,

v.

INTERNATIONAL BANK OF COMMERCE, BROWNSVILLE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS THIRTEENTH
DISTRICT OF TEXAS

PETITION FOR WRIT OF CERTIORARI

GREG WHITE
Counsel of Record
McGREGOR & WHITE
Attorneys for Petitioners
116 North 25th Street
Waco, Texas 76710
(254) 756-4427

151606

Counsel Press LLC
FORMERLY LUTZ APPELLATE SERVICES
(800) 274-3321 • (800) 359-6859

31PP

QUESTION PRESENTED

When a lawsuit is dismissed because a party cannot pay the fees of an arbitration service, does the dismissal violate the due process or equal protection clause of the Constitution?

LIST OF INTERESTED PARTIES

Pursuant to Rule 14.1(b) of the Supreme Court Rules, Petitioners hereby identify those persons, associations of persons, or other entities that are, or may be interested in the outcome of this case.

Parties to this Petition

Kenneth E. Critten & Delia G. Critten
Brownsville, Texas

Plaintiff/Petitioners

International Bank of Commerce, Brownsville
Brownsville, Texas

Defendant/Respondent

TABLE OF CONTENTS

	Page
Question Presented	i
List of Interested Parties	ii
Table of Contents	iii
Table of Cited Authorities	iv
Opinions Below	1
Statement of Jurisdiction	1
Constitutional Provisions	2
Statement of the Case	2
A. Course of Proceedings & Disposition of the Case Below	2
B. Statement of Facts	2
Argument and Authorities	5
Reasons for Granting the Writ	11
Conclusion	12

TABLE OF CITED AUTHORITIES

Page

Cases:

Armstrong v. Manzo, 380 U.S. 545 (1965) 7

Armstrong v. Randle, 881 S.W.2d 53 (Tex. App. – Texarkana 1994) 7

Boddie v. Connecticut, 401 U.S. 371 (1971) 6, 7, 10

Green International, Inc. v. State, 877 S.W.2d 428 (Tex. App. – Austin 1994) 7

Griffin v. Illinois, 351 U.S. 12 (1956) 5, 6, 10

LeCroy v. Hanlon, 713 S.W.2d 335 (1986) 8

Lindsey v. Normet, 405 U.S. 56 (1972) 10, 11

Little v. Streater, 452 U.S. 1 (1981) 10

Mayer v. Chicago, 404 U.S. 189 (1971) 10

Rinaldi v. Yeager, 384 U.S. 305 (1966) 10

Statute:

28 U.S.C. § 1257 1

United States Constitution:

Fourteenth Amendment 6, 10

Cited Authorities

Page

Texas Constitution:

Art. I, § 13 7

Art. 1, § 19 6

Rules:

Supreme Court Rule 10 1

Tex. R. Civ. P. 145 8

APPENDIX

Page

Appendix A — Opinion of The Court Of Appeals For The Thirteenth District Of Texas At Corpus Christi Dated And Filed June 4, 1998 ..... 1a

Appendix B — Judgment Of The Court Of Appeals For The Thirteenth Judicial District Of Texas At Corpus Christi Dated, Entered And Filed June 4, 1998 .... 5a

Appendix C — Final Judgment Of The 107th Judicial District Court Of Cameron County, Texas Dated And Filed September 30, 1996 ..... 7a

Appendix D — Letter From The Clerk Of The Supreme Court Of Texas To Counsel Denying Petition For Review Dated December 3, 1998 ..... 9a

Appendix E — Constitutional Provisions 11a

To the Supreme Court of the United States:

Comes now, Kenneth E. Critten, and Delia G. Critten, who are the Petitioners herein, and file this, their Petition for Writ of Certiorari. This is a case originally brought by the Crittens. The Trial Court ordered the parties to arbitrate, and when the Crittens could not afford the arbitrator's fee, the Court dismissed the case without any hearing on the merits.

For clarity, Kenneth E. Critten and Delia G. Critten, the Petitioners, will be referred to as "**the Crittens**", and International Bank of Commerce, Brownsville (the Respondent) will be referred to as "**IBOC**".

OPINIONS BELOW

The Texas Court of Appeals for the Thirteenth Supreme Judicial District is unpublished. A copy is included in the Appendix.

After that decision, the Texas Supreme Court refused a Petition for Review.

STATEMENT OF JURISDICTION

The decision of the Texas Supreme Court to refuse to hear this case was entered on December 3, 1998.

Jurisdiction in this Court is founded on 28 U.S.C. § 1257. Under Rule 10 of the Supreme Court Rules, this Court should grant this Petition. The decision of the Texas Court of Appeals decided an important question of federal law that has not been, but should be, settled by this Court.

CONSTITUTIONAL PROVISIONS

Both Texas and United States Constitutional provision are present. The relevant portions are included in the Appendix.

STATEMENT OF THE CASE

A. Course of Proceedings & Disposition of the Case Below

This is a lender liability case. After the suit was filed, the Trial Court ordered arbitration. The Crittens could not afford the arbitrator's fee, so the Trial Judge dismissed the case. The Trial Court's final judgment was signed on September 30, 1996. The Crittens appealed to the Thirteenth Court of Appeals. The Court of Appeals affirmed the judgment of the trial court in an unpublished opinion authored by Chief Justice Seerden dated June 4, 1998. The Crittens filed a timely Motion for Rehearing, and the Motion for Rehearing was denied on July 23, 1998.

Thereafter, the Crittens sought review from the Texas Supreme Court. Their Petition for Review was denied on December 3, 1998.

B. Statement of Facts

The Crittens are husband and wife who were engaged in the business of importing Mexican tile for sale in the United States. Typically, the tile makers in Mexico required cash on delivery. The Crittens, though, had developed a relationship with some vendors who would accept a check. This was a sensitive and special deal with particular customers of the Critten's company. The Crittens banking relationship was with IBOC. IBOC provided loans for working capital, along with other loans. IBOC "covered" the overdrafts that were occasioned by some of the checks that were written. Covering

overdrafts was a common practice between IBOC and the Crittens, and allowed the Crittens to make purchases from the Mexican vendors. In fact, the practice became so common place that the Crittens began to rely on IBOC to continue this practice. IBOC did continue until, without warning, it simply refused to pay a check to one of the Mexican tile vendors that would have caused an overdraft. The relationship with that vendor was permanently damaged, as was the Crittens business.

The Crittens sued, claiming negligence in IBOC's handling of the accounts, and in the representations made by IBOC about the accounts. After suit was filed, IBOC filed a motion to compel arbitration of the claims. The Crittens initially resisted arbitration, but eventually recognized that the documents that were involved in their suit contained mandatory arbitration clauses. The trial court ordered the parties to arbitration in an Agreed Order.

Some three years later, the Crittens and IBOC were ready for arbitration, but the American Arbitration Association required that the Crittens and IBOC *each* tender fees for holding the arbitration hearing, and receiving a decision on the claims. The fee for each side was $8,000. The Crittens could not afford the fees, and asked the trial court to reconsider its Order Compelling Arbitration. The trial court denied the request to reconsider the Arbitration, saying, "Well, I don't have any control over the fees that the arbitrators charge. That's between the parties to work out." The trial court eventually ordered the parties to complete their arbitration proceedings within the next 60 days.

Those 60 days passed without a completion of arbitration, and the parties assumed that the case was over after that 60 days. The Crittens filed a Motion for New Trial, asking, once again for some relief from the expense of the arbitration, but

the Motion for New Trial was denied after an oral hearing. The Trial Court eventually made his dismissal final by a Judgment entered on September 30, 1996.

Contrary to the opinion of the Texas Court of Appeals, there was never any doubt that the Crittens could not afford the arbitration fee. The essence of the opinion is contained in the last paragraph. The Court of Appeals said:

> The Crittens did not present any affidavit or other evidence to support their claim of inability to pay arbitration fees, nor did they present evidence of inability to pay at the hearings to reconsider or extend the time to arbitrate.

The idea that the Crittens failed to prove an inability to pay is not the reason that the trial court dismissed this case. The Trial Court plainly gave its reasons —

> . . . I don't have any control over the fees that the arbitrators charge. That's between the parties to work out. The Plaintiff's motion will be denied.

Moreover, the idea that the Crittens failed to prove an inability to pay is not an issue raised by either party in their briefs before any court. IBOC never challenged the Crittens' inability to pay IBOC never claimed that the Crittens themselves were not indigent.

Finally, the Crittens continuously claimed before the trial court that they did not have the ability to pay the arbitration fees. At that point, IBOC never disputed those allegations, either in response to Motions filed by the Crittens, or orally before the Court. There are numerous references to the indigence of the Crittens in the record, and all of them are undisputed. [The Crittens "don't have that kind of money;" that the Crittens have

been "in and out of bankruptcy;" that the Crittens "lost their home;" and that the Crittens "can't afford to have this case heard by an arbitration panel."] The Crittens were being sued for "several hundred thousand dollars, and were forced to close their business. Importantly, IBOC's claim for "several hundred thousand dollars" was dismissed at the same time that the Crittens' claims were dismissed. This was with the agreement of IBOC. If the Crittens had any assets from which IBOC could recover, it would seem improbable that IBOC would agree to give up a claim of several hundred thousand dollars.

In sum, the inability of the Crittens to pay was never in dispute. It was not disputed by IBOC — at any point. It was not doubted by the Trial Court.

ARGUMENT AND AUTHORITIES

Question:

When a lawsuit is dismissed because a party cannot pay the fees of an arbitration service, does the dismissal violate the due process or the equal protection clause of the Constitution?

The trial court dismissed the Critten's claims because they could not pay fees that were required by the arbitrators to hold a hearing on the merits of those claims. No court, or other decision making body ever heard evidence on the merits of the Critten's claims. Instead, the Crittens suffered a perceived wrong, filed suit, and the case was later dismissed without any hearing on the merits. That situation is at odds with the long standing Constitutional requirement that citizens have a fundamental right to be heard on their complaints.

"Providing equal justice for poor and rich, weak and powerful alike, is an age-old problem." *Griffin v. Illinois*, 351

U.S. 12, 16 (1956). It has not been made any easier by the addition of required alternative dispute resolution mechanisms. And, though these mechanisms are to be lauded for their general success in resolving disputes that would expend time in court, they do not represent a meaningful way to be heard for those who cannot afford them, and when the claim is never heard on the merits.

The concept of due process of law originates with the most basic rights of citizens in their interaction with the institutions that they create when they form a government. The creation of courts presumes that their procedures will not operate to deprive a citizen of the right to be heard, nor of the rights to fairness in the hearing process. Moreover, Due Process embodies substantive rights that prevent governmental institutions from imposing arbitrary and unreasonable impediments to the exercise of the citizens' other rights. Both the Texas Constitution and the United States Constitution specifically guarantee due process to citizens. *See* Art. 1, § 19. Tex. Const., Amend. XIV, United States Const.

The United States Constitution protects the right to be heard. In *Boddie v. Connecticut*, 401 U.S. 371 (1971), the Court held that a $60 filing fee for a divorce action cannot be imposed on those who cannot pay. *Boddie* contains an important and exhaustive survey of what the Due Process Clause does guarantee.

> Due Process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard.

Id. at 377. The right to be heard is not absolute, but it does entail "an opportunity . . . granted at a meaningful time, and in

a meaningful manner," *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). This is the minimum that States must provide.

In *Boddie*, then, requiring payment of those that cannot afford it as a condition to access to the courts violates the Due Process Clause. And while *Boddie* involved a right that was characterized as "fundamental", the right was fundamental because it was recognized as fundamental by the State.[1] The State of Texas expressly enforces a right to be heard in its Constitution. Article I, Section 13 of the Texas Constitution (the Open Courts provision) states, in relevant part:

> . . . All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have a remedy by due course of law.

The basic premise behind this provision is to ensure that all citizens have the right to bring well-established common law causes of action and to ensure that the government will not unreasonably abridge that right, *Green International, Inc. v. State*, 877 S.W.2d 428 (Tex. App. – Austin 1994). At least three separate guarantees are included within the Open Courts provision. First, that the courts will be open and operating. Second, that the common law causes of action will not be abrogated without providing a reasonable substitute. And, that the government will not condition access to the courts on unreasonable financial prerequisites[2], *see Armstrong v. Randle*, 881 S.W.2d 53 (Tex. App. – Texarkana 1994).

---

1. In *Boddie*, the Court said that "[t]he requirement that these appellants resort to the judicial process is entirely a state-created matter." at 382-383.

2. In determining whether there is "unreasonable financial barrier to access", a court must balance the governmental interest with the individual's (Cont'd)

And, Texas has recognized that access to the courts is a substantial and fundamental right guaranteed to Texas citizens. The Texas Supreme Court has already said:

> The open courts provision specifically guarantees all litigants the right to redress their grievances — to use a popular and correct phrase, the right to their day in court . . . ***This right is a substantial state constitutional right.*** Because a substantial right is involved, the legislature cannot arbitrarily or unreasonably interfere with a litigant's right of access to the courts.

(Citations omitted) *LeCroy v. Hanlon*, 713 S.W.2d 335, 341 (1986). (Emphasis added).

The Crittens case comes squarely within the terms of these principles. The Crittens have a claim that they presented to the State courts, within the procedures established by the State. They were justified in filing a claim, and indeed, were guaranteed the right to present a claim by the Texas Constitution. Once they are in court, based on state-created procedure, they then have a right to be heard in a meaningful manner. Had they remained in the civil court system, the Crittens could have obtained a resolution of their claims. In fact, they could have entered the civil court system, and obtained a resolution, even if they were unable to afford the usual fees. *See* Rule 145, *Tex. R. Civ. P.* To be denied any hearing of their

---

(Cont'd)

right of access to the courts, *see LeCroy v. Hanlon*, 713 S.W.2d 335, 341 (Tex. 1986). Here that balance is easily stated. Texas has long expressed its policy of allowing even the most destitute of citizens the ability to bring suit, and to obtain a resolution of their claims. The Texas Rules of Civil Procedure (Rule 145) permit suit to be brought (and resolution obtained) by those unable to pay.

claim because of their inability to pay money, denies them (in particular) the right to be heard. Denial of that right is a violation of the Due Process Clause.

Certainly, arbitration can be a method of case resolution that is quicker and more efficient than court directed trials. The idea that encouraging the speedy, efficient, and inexpensive resolution of pending dispute without using valuable court resources is a positive development in the law. The fact that businesses, and the courts, find alternative dispute resolution desirable is a similarly good development. However, "encouraging" resolution by dismissal of suits, as happened here, is not the purpose of either alternative dispute resolution, generally, or arbitration, specifically. Both of these procedures are designed to "hear" and to "resolve" disputes. Neither is designed to avoid the ultimate resolution, and especially not to do so solely due to financial resources available to each party.

Simply stated, this Court should balance a citizen's right to some resolution of his claims (regardless of wealth) against the interests of the State in favoring resolution through a particular method. When the method that is favored, but not required, by the State (here arbitration) operates to completely deny any resolution, and when the State has the ability to provide another method of resolution (through the courts), then the State's favored method of resolution (arbitration) must give way. Here, the Crittens must be permitted a forum for resolution, and the only available forum is the courts.

The requirement that the Crittens pay a fee to the arbitrators when they cannot afford the fee places an unreasonable financial barrier to access to the courts. It makes the courts "closed" to the Crittens, and does so in the face of another policy that would specifically permit the Crittens access to the courts. There is no legislative interest in allowing some people to have their claims resolved, while others (who cannot afford to pay) are denied that same right.

It is true that most of the cases that deal with access to the courts and the ability to pay for it have arisen in connection with criminal matters, *Griffin v. Illinois*, 351 U.S. 12 (1956) and *Mayer v. Chicago*, 404 U.S. 189 (1971). Both of those cases hold that the States are not required to establish avenues of appellate review, but once established, the right must be free of "unreasoned distinctions that can only impede open and equal access to the courts." *Rinaldi v. Yeager*, 384 U.S. 305, 310 (1966).

While the principles of open and equal access to the courts has not been extended to a broad array of civil cases, it has been applied to cases where fundamental rights are at issue. *Boddie v. Connecticut*, 401 U.S. 371 (1971) [Divorce]; *Little v. Streater*, 452 U.S. 1 (1981) [Paternity]; *Lindsey v. Normet*, 405 U.S. 56 (1972) [Housing]. But access to the Courts is a fundamental and substantial right under Texas law.

The important distinction between this case, and those listed is that the cited cases involved the appellate process. In other words, all of the litigants in *Boddie*, *Little* and *Lindsey* had received one full hearing. The issue for those litigants was whether their case was entitled to a second look — regardless of their ability to pay. The Crittens did not get a first look at their case. Their case was dismissed because they could not pay for a court-ordered method of resolution that required the payment of fees, and they received no decision on their case.

Moreover, both the Texas Constitution and the Federal Constitution guarantee that every citizen is entitled to equal treatment under the law. The requirement that litigants in a court case must pay arbitration fees or forfeit their right to a hearing is an impermissible classification based on wealth. It therefore violates the Equal Protection Clause of the Fourteenth Amendment. While a State may make reasonable procedural

requirements to protect interests that are in jeopardy during litigation, its procedural requirements must not arbitrarily deny any hearing. *See Lindsey v. Normet*, 405 U.S. 56 (1982). In this case, the decision that denies the Crittens any right to present their claims without the payment of an unaffordable and unreasonable fee classifies them on the basis of their wealth.

The Judgment in this case does exactly what the Equal Protection Clause prohibits. If nothing else, equal protection means that the State will not differentiate between its citizens on the basis of arbitrary distinctions. The Crittens are persons who cannot afford an $8,000 arbitrator's fee. They cannot have their case heard. Others, such as IBOC, who can pay the $8,000 fee have full access to arbitration procedures, and have full access to the courts.

REASONS FOR GRANTING THE WRIT

The policy of encouraging alternative dispute resolution, including arbitration, is admirable, and should be continued. However, when that policy operates so as to deny a citizen any right to be heard, *at all*, and does so because of financial reasons, the policy must give way to basic constitutional norms. That is, citizens must be granted access to the courts, their access to dispute resolution must be unburdened by unreasonable financial barriers, and dispute resolution must never be reserved only for those who can afford it.

This case represents an opportunity to assure citizens that although the State may restrict their right to multiple hearings on a dispute, they are entitled to at least one full and fair hearing. If the State chooses to require that first hearing in an alternative dispute resolution system, then it cannot condition the first hearing on an ability to pay.

The rights of the various States to require alternative dispute resolution, in general, and arbitration, in particular is not doubted by such a decision. But, in light of the increasing use of these mechanisms to reduce the time and effort expended by the State courts, certain limits must be drawn. On its present course, justice could very easily be reserved to those who can pay simply by requiring an alternative dispute resolution of all litigants (and many States do exactly that). By doing so, there are many litigants whose disputes would simply be dismissed if they could not afford what the Court ordered them to do.

CONCLUSION

For the reasons stated above, this Court should grant this Petition for Certiorari, and should reverse the Judgment of the courts below.

Respectfully submitted,

GREG WHITE
Counsel of Record
McGREGOR & WHITE
Attorneys for Petitioners
116 North 25th Street
Waco, Texas 76710
(254) 756-4427

APPENDIX

APPENDIX A — OPINION OF THE COURT OF APPEALS FOR THE THIRTEENTH DISTRICT OF TEXAS AT CORPUS CHRISTI DATED AND FILED JUNE 4, 1998

NUMBER 13-96-402-CV

COURT OF APPEALS
THIRTEENTH DISTRICT OF TEXAS
CORPUS CHRISTI

KENNETH E. CRITTEN AND DELIA G. CRITTEN,

Appellants,

v.

INTERNATIONAL BANK OF COMMERCE,

Appellee.

On appeal from the 107th District Court of Cameron County, Texas.

O P I N I O N

Before Chief Justice Seerden and
Justices Hinojosa and Chavez
Opinion by Chief Justice Seerden

Kenneth and Delia Critten appeal from the dismissal of their lawsuit against International Bank of Commerce, Brownsville (IBC), for failure to arbitrate the dispute in accordance with the trial court's orders. The Crittens raise three points of error complaining that the dismissal of their lawsuit

violates the due process, open courts, and equal protection provisions of the Texas and United States Constitutions. We affirm.

The Crittens filed suit against IBC in 1993 for its failure to honor an alleged agreement to cover their overdrafts in connection with a loan agreement. IBC moved to compel arbitration in accordance with a provision of the loan agreement that required arbitration. By an agreed order signed on November 23, 1994, the trial court required the Crittens to submit their claims to arbitration, and stayed and abated the underlying lawsuit pending arbitration.

On September 21, 1995, the Crittens moved to reconsider the order compelling arbitration on the ground that they were not able to pay arbitration fees. The arbitration clause of the loan agreement provides for arbitration by at least three arbitrators in accordance with the commercial arbitration rules of the American Arbitration Association (AAA), and that each party "shall pay an equal share of the arbitrators' fees." The Crittens claimed, however, by their unsworn motion to reconsider, that they were unable to pay an $8,000 fee charged to them by the AAA, and that the AAA suspended the arbitration proceedings for their failure to pay. Accordingly, the Crittens requested the trial court to rescind its earlier order compelling arbitration and to set their lawsuit for trial.

On February 26, 1996, IBC moved to dismiss the Crittens lawsuit for failure to pay the arbitration fees in violation of the agreement and the trial court's order compelling arbitration. On February 29, 1996, the trial court heard the motion to reconsider, orally denied the motion and ordered arbitration within sixty days. On April 16, 1996, the Crittens moved to

extend time to arbitrate, alleging that they had terminated their attorneys and needed an additional sixty days to arbitrate. The trial court heard the motion to extend arbitration on April 26, 1996, and signed an April 29, 1996, order requiring the dispute to be arbitrated by April 30, 1996, or it would be dismissed. On September 30, 1996, the trial court signed an order finally dismissing the Crittens' claims for failure to complete arbitration. From this order, the Crittens bring the present appeal.

By all three points of error, the Crittens attack the constitutionality of the dismissal as having deprived them of the right to assert their claims because they were unable to pay the arbitration fees demanded by the arbitrators. However, we need not determine whether a constitutional right may exist, under any of the various clauses raised because in the present case the Crittens have failed to properly raise and prove their inability to pay as a defense to arbitration.

In the present case, the Crittens do not generally challenge the authority of the trial court to dismiss a lawsuit for failure to proceed to arbitration. They challenge the present dismissal only to the extent that it allegedly deprived them of their lawsuit because of their inability to pay arbitration fees. However, even if inability to pay might be a defense to arbitration or implicate constitutional rights to due process, equal protection and open courts, it must still be raised properly and proven as any other defense to arbitration. The Crittens did not present any affidavit or other evidence to support their claim of inability to pay arbitration fees, nor did they present evidence of inability to pay at the hearings to reconsider or extend the time to arbitrate. Accordingly, they have failed to show that they were denied any of their asserted constitutional rights because of inability

to pay arbitration fees. We overrule the Crittens' three points of error.

The judgment of the trial court is AFFIRMED.

s/ Robert J. Seerden
ROBERT J. SEERDEN, Chief Justice

Do not publish.
Tex. R. App. P. 47.3.

Opinion delivered and filed this
the 4th day of June, 1998.

APPENDIX B — JUDGMENT OF THE COURT OF APPEALS FOR THE THIRTEENTH JUDICIAL DISTRICT OF TEXAS AT CORPUS CHRISTI DATED, ENTERED AND FILED JUNE 4, 1998

COURT OF APPEALS

Thirteenth Judicial District

Corpus Christi, Texas

Below is the JUDGMENT in the numbered cause set out herein to be Filed and Entered in the Minutes of the Court of Appeals, Thirteenth Judicial District of Texas, at Corpus Christi, as of the 4th day of June, 1998. If this Judgment does not conform to the opinion handed down by the Court in this cause, any party may file a motion for Correction of Judgment with the Clerk of this Court.

CAUSE NO. 13-96-402-CV
(Tr. Ct. No. 93-01-286-A)

KENNETH E. CRITTEN AND DELIA G. CRITTEN,

Appellants,

INTERNATIONAL BANK OF COMMERCE,

v.

Appellee,

on appeal to this Court from Cameron County, Texas.

* * * *

Appendix B

JUDGMENT

On appeal from the 107th District Court of Cameron County, Texas, from a judgment signed September 30, 1996. Opinion by Chief Justice Robert J. Seerden. Do not publish. Tex. R. App. P. 47.3.

THIS CAUSE was submitted to the Court on November 20, 1997, on oral argument, the record, and briefs. These having been examined and fully considered, it is the opinion of the Court that there was no error in the judgment of the court below, and said judgment is hereby AFFIRMED against appellants, Kenneth E. Critten and Delia G. Critten.

Costs of the appeal are adjudged against appellants, Kenneth E. Critten and Delia G. Critten, and Greg White, as surety on the cost bond. It is ordered that this decision be certified below for observance.

* * * *

CATHY WILBORN, CLERK

APPENDIX C — FINAL JUDGMENT OF THE 107TH JUDICIAL DISTRICT COURT OF CAMERON COUNTY, TEXAS DATED AND FILED SEPTEMBER 30, 1996

In the 107th Judicial
District Court of
Cameron County, Texas

No. C-93-01-286-A

Kenneth E. Critten and Delia G. Critten

v.

International Bank of Commerce — Brownsville

Final Judgment

On this the __ day of _____ 1996, the above referenced cause came to be heard. The Court noted its order of April 29th, 1996, and also noted that no arbitration has taken place according to information supplied to the Court by the parties to this case. The Court takes judicial notice of the hearings before it since April of 1996, and has determined that the entry of a Final Judgment in this case is appropriate.

It is, therefore, ORDERED that the claims of the Plaintiffs against the Defendant are DISMISSED. It is, further, ORDERED, that the claims of the Defendant against the Plaintiffs are DISMISSED.

All other relief not specifically granted is denied.

Signed this the 30 day of Sept. 1996.

Appendix C

/s/ BENJAMIN EURESTI, JR.
Hon. Benjamin Euresti, Jr.
Judge, 107th Judicial Court

APPENDIX D — LETTER FROM THE CLERK OF THE SUPREME COURT OF TEXAS TO COUNSEL DENYING PETITION FOR REVIEW DATED DECEMBER 3, 1998

THE SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711
(512) 463-1312

December 03, 1998

Mr. Greg White
McGregor & White
116 North 25th Street
Waco, TX 76710

Mr. Andy A. Tschoepe, II
Law Offices of Andy A. Tschoepe
175 E. Houston, Suite 250
San Antonio, TX 78205

RE: Case Number 98-0860
Court of Appeals Number: 13-96-00402-CV
Trial Court Nubmer: C-93-01-286-A

Style: KENNETH E. CRITTEN and DELIA G. CRITTEN
v.
INTERNATIONAL BANK OF COMMERCE, BROWNSVILLE

Dear Counsel:

Today, the Supreme Court of Texas denied the petition for review in the above styled case.

Appendix D

Sincerely,

John T. Adams, Clerk

by s/ Matthew D. Melton
Matthew D. Melton, Deputy

cc: Ms. Cathy Wilborn, Clerk
Ms. Aurora De La Garza, District Clerk

APPENDIX E — CONSTITUTIONAL PROVISIONS

United States Constitutional Provisions

Amendment XIV:

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Texas Constitutional Provisions

Article 1. Section 13 (the Open Courts provision), in relevant part:

> ". . . All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have a remedy by due course of law."

Article I, Section 19 (State Due Process Clause) provides:

> "No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land,"

Appendix E

Article I, Section 3 (State Equal Protection Clause) says:

> "All free me, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public service."